

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ludger GRAUTE et al.
US National Stage Serial No.:
10/ 555,305
Confirmation No. 4991
Int'l Appl. No: PCT/DE2004/000917
Int'l Filing Date: 30 APRIL 2004
For: MULTIFUNCTIONAL LEVER

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Art Unit: 3673
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/Sophie Chen/

SOPHIE CHEN

APPEAL BRIEF

SIR:

As required under 37 C.F.R. § 41.37 (a)(1), this brief is filed within two months from the date of filing the notice of appeal under 37 C.F.R. § 41.31. The fees required under 37 C.F.R. § 41.37 (a)(2), and § 41.37 (b)(2) are submitted herewith via EFS-Web.

This Brief contains items under the following headings as required by 37 C.F.R. § 41.37 (c)(1) and M.P.E.P. § 1205.02:

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims Appendix
- IX. Evidence Appendix
- X. Related Proceedings Appendix

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is KIEKERT AKTIENGESELLSCHAFT, the assignee of record of the entire right, title, and interest in the present application, as evidenced by the assignment document recorded in the United States Patent and Trademark Office on December 14, 2005, at Reel No. 016889 and Frame No. 0871.

II. RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings known to the appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 26 claims pending in application.

B. Current Status of Claims

1. Claims canceled: 1-10
2. Claims withdrawn from consideration but not canceled: none
3. Claims pending: 11-36
4. Claims allowed: none
5. Claims allowable (objected to): none
6. Claims rejected: 11-36

C. Claims on Appeal

The claims on appeal are 11-36.

IV. STATUS OF AMENDMENTS

Appellant did not file an Amendment after Final Rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 11

The invention relates in independent claim 11 to a multifunctional lever comprising: a basic lever (1) for performing an actuating function; and one or more lever element(s) (2, 3) for performing one or more actuating functions; said basic lever (1) and at least one said lever element(s) (2, 3) being separate parts; and said basic lever (1) and said lever element(s) (2, 3) being rigidly and inseparably connected together. See, e.g., paragraphs [0012] through [0016], [0024], and [0026], and Figures 1-3 of the Substitute Specification filed on 11/02/05.

Independent claim 20

The invention relates in independent claim 20 to a multifunctional lever comprising: a basic lever (1) for performing an actuating function; and one or more additional lever(s) (2, 3) for performing one or more actuating functions; wherein at least one said additional lever(s) (2, 3) are riveted, bolted, clipped, snapped-in, welded or glued to said basic lever (1). See, e.g., paragraphs [0012] through [0016], [0021], [0024], [0026], [0027] (line 7), and [0031] (line 5), and Figure 2 of the Substitute Specification filed on 11/02/05.

Independent claim 29

The invention relates in independent claim 29 to a vehicle door latch comprising: a catch (10); a pawl (4); a basic lever (1) for performing an actuating function; and one or more additional lever(s) (2, 3) for performing one or more actuating functions; said basic lever (1) and said additional lever(s) (2, 3) being separate parts; and said basic lever (1) and said additional lever(s) (2, 3) being rigidly and inseparably connected together. See, e.g., paragraphs [0012] through [0017], and [0024] through [0026], (lines 1-5), and Figures 1-3 of the Substitute Specification filed on 11/02/05.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 11-36 are indefinite under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Whether claims 11-36 are unpatentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,641, 184 to Erices et al. (“Erices ‘184”) in view of JP Pat No. 8218710 to Tatsuhiko et al (“Tatsuhiko”).

VII. ARGUMENT

- 1. Whether claims 11-36 are indefinite under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

A. The Applicant has not stated that the invention is something different from what is defined by the claims.

The first requirement set forth in the second paragraph of 35 U.S.C. 112 is that the claims must set forth the subject matter that Applicant regards as his invention. The focus of the inquiry is on whether somewhere other than in the Application as filed, the Applicant has stated that the invention is something different from what is defined in the claims. Applicant has not made any such statements and the Examiner has not referred to any such statements by the Applicant in making his rejection. Specifically, Applicant claims the limitations of “a basic lever (1) for performing an actuating function” and “one or more lever element(s) (2, 3) for performing one or more actuating functions,” and these are precisely the limitations that Applicant intends to claim. Accordingly, the invention set forth in the claims must be presumed to be that which Applicant regards as his invention. In re Moore, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971).

B. The limitations in the claims meet the threshold requirement of clarity and precision.

The second requirement set forth in the second paragraph of 35 U.S.C. 112 is that the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant. The focus of the inquiry is on whether the claims meet the threshold requirements of clarity and precision, i.e., whether they define the patentable subject matter with a reasonable degree of particularity and distinctness.

Applicant's claim limitations of "a basic lever (1) for performing an actuating function" and "one or more lever element(s) (2, 3) for performing one or more actuating functions" apprise one of ordinary skill in the art of the claim scope and provide clear warning to others as to what constitutes infringement of the patent; thus, the claims define the patentable subject matter with a reasonable degree of particularity and distinctness, and particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

The Examiner appears to argue that because Applicant has not specified which actuating functions are performed by the basic lever and the lever elements, it is unclear what the applicant is trying to claim. (Final Office Action, page 2, lines 14-15, "What are the actuating functions? And in which environment (lock system)?") The position of the Examiner is untenable. Applicant is claiming a machine comprising "a basic lever (1) for performing an actuating function" and "one or more lever element(s) (2, 3) for performing one or more actuating functions." The specific identity of the actuating functions is not being claimed nor is it necessary to claim it in order to provide clarity and precision.

Actuating functions are well-known in the art and a skilled artisan would understand that the basic lever and the lever elements may perform actuating functions, e.g., in the nature of putting into motion or activating an element that is or is not a part of the machine being claimed. In addition, Applicant has given ample examples in the specification of actuating functions that can be carried out by the basic lever and the lever elements. See, e.g., [0025] (particularly, lines 3, 6, and 12), [0028] (particularly lines 3-5, first actuating function: dropping the pawl into a primary

position, second actuating function: lifting the pawl out of the primary position), [0029] (lines 3-4, the actuating functions of putting into motion an internal or external release lever or a central locking element), and [0032] (lines 3-7, the actuating functions of opening the locking mechanism with the aid of external or internal release levers).

C. The breadth of limitations is not indefiniteness.

In making the rejection under 35 U.S.C. 112, second paragraph, the Examiner also argues that the claims are broad. (Final Office Action, page 2, line 15, “The claims are BROAD.”) However, breadth of a claim is not to be equated with indefiniteness. In re Miller, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). Because the scope of the subject matter as claimed is clear, and Applicant has not otherwise indicated that he intends the invention to be of a scope different from that defined in the pending claims, the claims comply with 35 U.S.C. 112, second paragraph.

D. Requiring one or more additional levers (2, 3) separate from and connected to the basic lever (1) do not make claims indefinite.

The Examiner argues that requiring one or more additional levers (2, 3) separate from and connected to the basic lever (1) makes the claims indefinite “since lever 3 is not separate from the basic lever; the lever and the basic lever are form [sic] together.” (Final Office Action, page 2, lines 18-23.) The Examiner’s position is not supported by the record. Particularly, the specification clearly states that at least the lever element (2) and the basic lever (1) are separate parts, rigidly and inseparably connected together. (See, e.g., [0026], last 2 lines, [0034], lines 1-3, and Figure 2 of the Specification as filed on 11/2/2005).

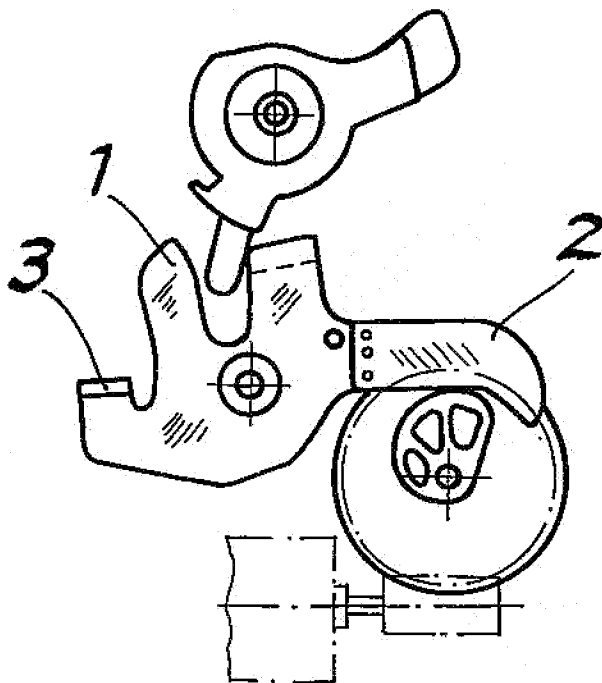
Applicant does not necessarily claim that all lever elements are separate parts but that at least one lever element is separate from the basic lever. (Compare claims 11 and 29: “said basic lever (1) and at least one said lever element(s) (2, 3) being separate parts” versus “said basic lever (1) and said additional lever(s) (2, 3) being separate parts).

Accordingly, at least for the reasons set forth in A-D above, Appellant respectfully submits the pending claims are not indefinite.

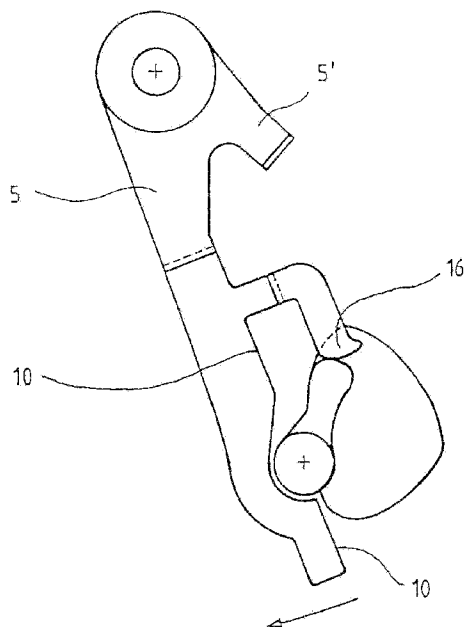
2. Whether claims 11-36 are unpatentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,641, 184 to Erices et al. (“Erices ‘184”) in view of JP Pat No. 8218710 to Tatsuhiko et al (“Tatsuhiko”).

2.1 Independent claims 11 and 29, and dependent claims 12-19 and 30-36

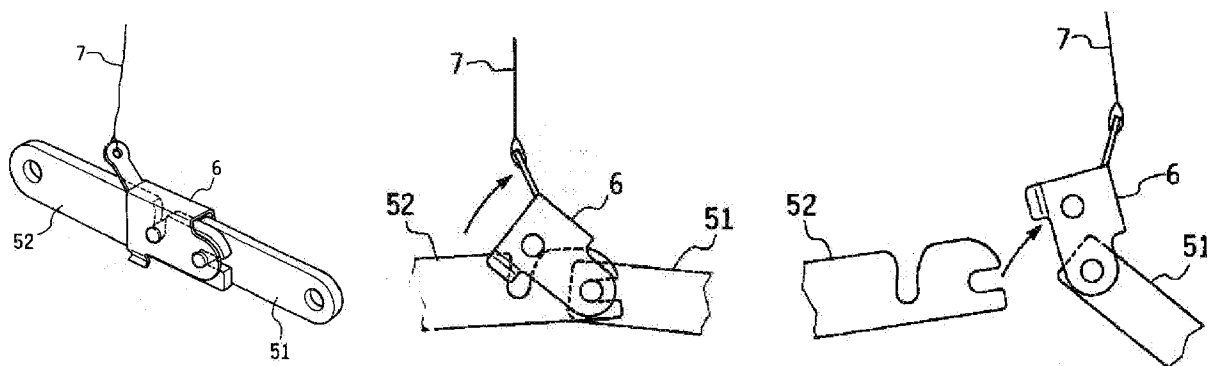
The claims teach a multifunctional lever (or a vehicle door latch) comprising a basic lever (1) for performing an actuating function; and one or more lever element(s) (2, 3) for performing one or more actuating functions. The basic lever (1) and the lever element(s) (2, 3) are separate parts, and the basic lever (1) and at least one said lever element(s) (2, 3) are rigidly and inseparably connected together. (See figure below, Appellant’s Fig. 2 with extraneous reference numbers removed for clarity).



Erices '184 discloses a detent pawl lever (5) with a driver arm (5'), an actuating section (10), and a blocking piece (16). (See figure below, Erices '184, Fig. 3 with extraneous reference numbers removed for clarity).



Tatsuhiro discloses arms 51 and 52. Tatsuhiro further discloses a quick disconnect member 6 attached to wire 7 for connecting and disconnecting arms 51 and 52. (See figures below, Tatsuhiro, Figs. 4 & 5 with extraneous reference numbers removed for clarity).



A. Elements taught by Appellant are sufficiently different from the combination of elements recited by Erices '184 and Tatsuhiro rendering Appellant's claims nonobvious

Appellant teaches *inter alia* the elements of the basic lever (1) and at least one lever element(s) (2, 3) being separate parts; and the basic lever (1) and the lever element(s) (2, 3) being rigidly and inseparably connected together.

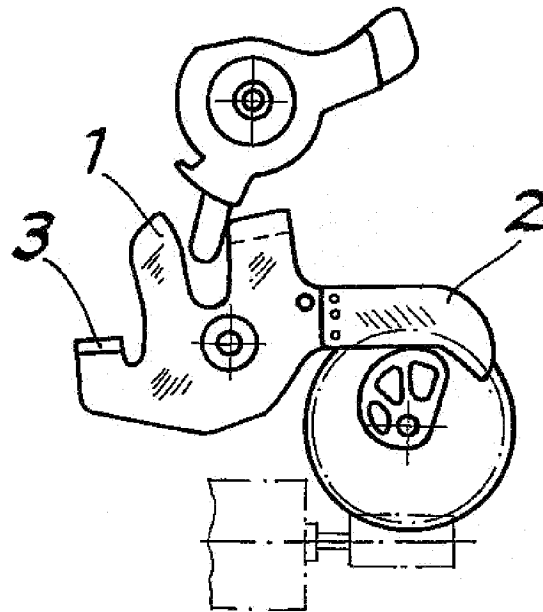
Erices '184 fails to disclose that at least one of the lever elements(s) and the basic lever are separate parts being connected together. (Admitted by the Examiner in Final Office Action, page 3, lines 20-21, "However, Erices '184 fails to disclose that one of the lever elements is a separate member connected to the basic lever.) More importantly, Erices '184 fails to disclose that at least one of the lever elements(s) and the basic lever are rigidly and inseparably connected together.

Similarly, Tatsuhiro fails to disclose that at least one of the lever elements(s) and the basic lever are separate parts being rigidly and inseparably connected together. Specifically, arms 51 and 52 in Tatsuhiro are connected by a quick disconnect member 6 attached to wire 7. The reason for having two arms 51 and 52 in the first place (instead of only one arm as in Fig. 6 of Tatsuhiro) is so that the two arms can be *separated* by pulling on the wire 7 in case the electric operation of the arm 52 fails and a separation of the two arms 51 and 52 becomes necessary for manually opening the lock mechanism. Thus, arms 51 and 52 are *separably* connected together in Tatsuhiro.

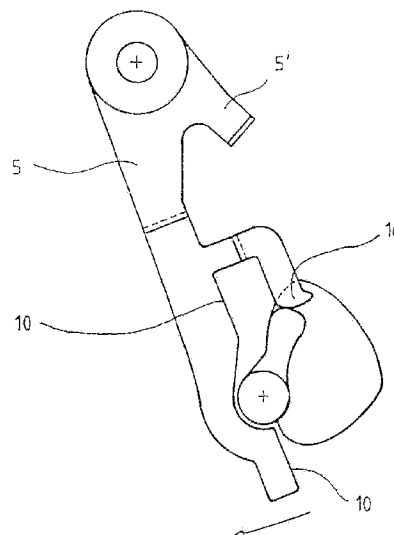
Accordingly, since not all of the claim elements claimed by the Appellant are found in the combination of Erices '184 and Tatsuhiro and there is a large gap between the prior art and the invention, Appellant respectfully submits the pending claims are not obvious in view of the prior art. See, e.g., Dann v. Johnston, 425 U.S. 219, 230, 189 USPQ 257, 261 (1976).

2.2 Independent claim 20, and dependent claims 21-28

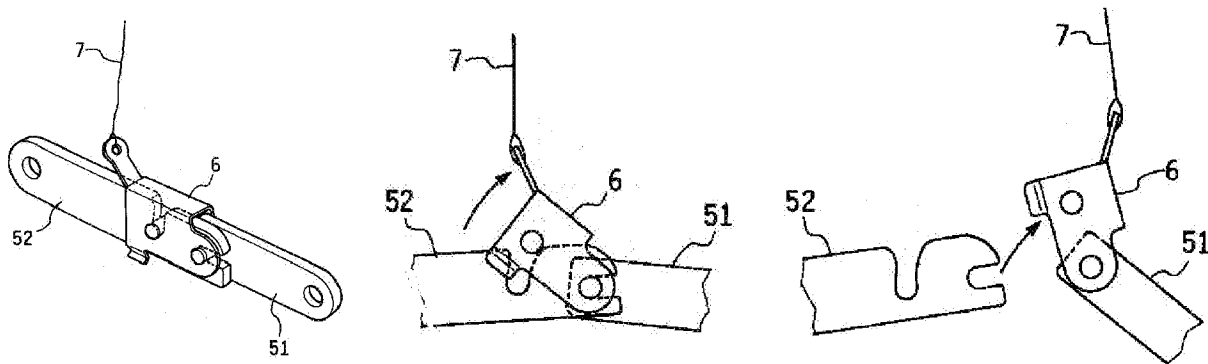
The claims teach a multifunctional lever comprising: a basic lever (1) for performing an actuating function; and one or more additional lever(s) (2, 3) for performing one or more actuating functions. At least one additional lever(s) (2, 3) are riveted, bolted, clipped, snapped-in, welded or glued to the basic lever (1). (See figure below, Appellant's Fig. 2 with extraneous reference numbers removed for clarity).



Erices '184 discloses a detent pawl lever (5) with a driver arm (5'), an actuating section (10), and a blocking piece (16). (See figure below, Erices '184, Fig. 3 with extraneous reference numbers removed for clarity).



Tatsuhiro discloses arms 51 and 52. Tatsuhiro further discloses a quick disconnect member 6 attached to wire 7 for connecting and disconnecting arms 51 and 52. (See figures below, Tatsuhiro, Figs. 4 & 5 with extraneous reference numbers removed for clarity).



A. Elements taught by Appellant are sufficiently different from the combination of elements recited by Erices '184 and Tatsuhiro rendering Appellant's claims nonobvious

Appellant teaches *inter alia* the elements of at least one additional lever(s) (2, 3) being riveted, bolted, clipped, snapped-in, welded or glued to the basic lever (1).

Neither Erices '184 nor Tatsuhiro, alone or in combination, disclose that at least one additional lever(s) (2, 3) being riveted, bolted, clipped, snapped-in, welded or glued to the basic lever (1).

The Examiner argues that whether the additional lever(s) (2, 3) are riveted, bolted, clipped, snapped-in, welded or glued to the basic lever (1) is a design choice within the art and has no patentable weight. This position is not tenable. Specifically, Applicant's invention lies *inter alia* in that the additional lever(s) (2, 3) are riveted, bolted, clipped, snapped-in, welded or glued to the basic lever (1). While various one-membered levers are known from prior art, Applicant's invention solves the technological problem applicable, e.g., in vehicle door lock production, wherein in basic car models a single basic lever is needed for mechanical actuation, but in luxury models in addition to the single basic lever for mechanical actuation, additional levers are needed

for electric actuation. Manufacturing two different basic levers is not as cost efficient as manufacturing a single basic lever and riveting, bolting, etc., to the basic lever (1) additional lever(s) (2, 3) as a separate production step according to demand. Applicant's limitation of riveting, bolting, etc., additional lever(s) (2, 3) to the basic lever (1) is not a mere design choice but is rather a cornerstone of the design of the multifunctional lever and carries patentable weight.

Accordingly, since not all of the claim elements claimed by the Appellant are found in the combination of Erices '184 and Tatsuhiko, there is a large gap between the prior art and the invention, and the limitations disclosed in the pending claims are not merely a matter of "design choice," Appellant respectfully submits the pending claims are not obvious in view of the prior art.

CONCLUSION

For at least the reasons set forth above, the rejections by the Examiner should be reversed.

Customer Number: **33,794**

Respectfully Submitted,

/Matthias Scholl/

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Reg. No. 54,947
Attorney for Appellant

Date: October 29, 2008

VIII. CLAIMS APPENDIX

11. A multifunctional lever comprising:
 - a basic lever (1) for performing an actuating function; and
 - one or more lever element(s) (2, 3) for performing one or more actuating functions;
 - said basic lever (1) and at least one said lever element(s) (2, 3) being separate parts; and
 - said basic lever (1) and said lever element(s) (2, 3) being rigidly and inseparably connected together.
12. The multifunctional lever of claim 11, wherein said basic lever (1) is made of metal or plastic, or a combination of metal and plastic.
13. The multifunctional lever of claim 11, wherein one or more said lever element(s) (2, 3) are made of metal or plastic, or a combination of metal and plastic.
14. The multifunctional lever of claim 12, wherein one or more said lever element(s) (2, 3) are made of metal or plastic, or a combination of metal and plastic.
15. The multifunctional lever of claim 11 comprising two or more lever elements.
16. The multifunctional lever of claim 11 comprising three or more lever elements.

17. The multifunctional lever of claim 11, wherein said basic lever (1) and said one or more lever element(s) (2, 3) have the same axis of rotation.
18. The multifunctional lever of claim 11, wherein said one or more lever element(s) are rigidly connected to said basic lever (1).
19. The multifunctional lever of claim 11, wherein said one or more lever element(s) are mechanically actuated.
20. A multifunctional lever comprising:
 - a basic lever (1) for performing an actuating function; and
 - one or more additional lever(s) (2, 3) for performing one or more actuating functions;
 - wherein at least one said additional lever(s) (2, 3) are riveted, bolted, clipped, snapped-in, welded or glued to said basic lever (1).
21. The multifunctional lever of claim 20, wherein said basic lever (1) is made of metal or plastic, or a combination of metal and plastic.
22. The multifunctional lever of claim 20, wherein one or more said lever element(s) (2, 3) are made of metal or plastic, or a combination of metal and plastic.

23. The multifunctional lever of claim 21, wherein one or more said lever element(s) (2, 3) are made of metal or plastic, or a combination of metal and plastic.
24. The multifunctional lever of claim 20 comprising two or more lever elements.
25. The multifunctional lever of claim 20 comprising three or more lever elements.
26. The multifunctional lever of claim 20, wherein said basic lever (1) and said one or more lever element(s) (2, 3) have the same axis of rotation.
27. The multifunctional lever of claim 20, wherein said one or more lever element(s) are rigidly connected to said basic lever (1).
28. The multifunctional lever of claim 20, wherein said one or more lever element(s) are mechanically actuated.
29. A vehicle door latch comprising:
 - a catch (10);
 - a pawl (4);
 - a basic lever (1) for performing an actuating function; and
 - one or more additional lever(s) (2, 3) for performing one or more actuating functions;
 - said basic lever (1) and said additional lever(s) (2, 3) being separate parts; and

said basic lever (1) and said additional lever(s) (2, 3) being rigidly and inseparably connected together.

30. The vehicle door latch of claim 29, wherein said one or more additional lever(s) (2, 3) are riveted, bolted, clipped, snapped-in, welded or glued to said main lever (1).
31. The vehicle door latch of claim 29, wherein said basic lever (1) is made of metal or plastic, or a combination of metal and plastic and one or more said lever element(s) (2, 3) are made of metal or plastic, or a combination of metal and plastic.
32. The vehicle door latch of claim 29, wherein one said lever element (2) is attached to a driving wheel (5), said driving wheel being motor-driven.
33. The vehicle door latch of claim 32, wherein an electrical motor (6) having a worm gear (7) acts upon said driving wheel (5), said driving wheel (5) comprising further a gear rim or a gear rim section.
34. The vehicle door latch of claim 33, wherein said driving wheel (5) comprises further a radial cam (8) for interacting with said lever element (2).
35. The vehicle door latch of claim 29, wherein said one or more lever element(s) are mechanically actuated.

36. The vehicle door latch of claim 29, wherein said one or more lever element(s) are electrically actuated.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None